

CITY OF BRANSON  
BOARD OF ADJUSTMENT  
MINUTES  
March 24, 2011

**CALL TO ORDER:** Chairperson Keller called the regular meeting of the City of Branson Board of Adjustment meeting to order at 7:00 p.m. at the City Council Chambers, 110 W. Maddux St., Branson, Missouri.

<b>ATTENDANCE</b>
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**1. Roll Call**

Boardmembers Present:	Edie, Miles, Parnell, and Chairperson Keller
Boardmembers Absent:	Farris
Staff Present:	Jim Lawson, Director of Planning and Development Joel Hornickel, Senior Planner William Duston, City Attorney Sonja Paden, Office Assistant II

**2. Approve Agenda**

**MOTION:**

Motion by Boardmember Edie and seconded by Boardmember Parnell to approve the format of the March 24, 2011 agenda.

AYES:	Boardmembers Edie, Parnell, Miles and Chairperson Keller.
NOES:	None.
ABSTAIN:	None.
ABSENT:	Boardmember Farris.

Motion to approve the March 24, 2011 agenda carried with a 4-0 vote.

**3. Approve Minutes.**

**A. September 23, 2010.**

**MOTION:**

Motion by Boardmember Edie and seconded by Boardmember Miles to approve the minutes of the September 23, 2010 meeting as modified with the correction to the "Absent" vote from Miles to Farris on pages one and two.

AYES:	Boardmembers Edie, Parnell, Miles and Chairperson Keller.
NOES:	None.
ABSTAIN:	None.
ABSENT:	Boardmember Farris.

Motion to approve the minutes of the September 23, 2010 meeting as modified carried with a 4-0 vote.

#### 4. Re-election of Vice-Chairperson

Chairperson Keller said, since Pat Parnell would no longer be on the board, the board would be short two members, including an alternate. He proposed they postpone this election until the mayor appointed more people to the board; they could then discuss this at a later date.

#### MOTION:

Motion by Boardmember Edie and seconded by Boardmember Parnell to postpone the election of a Vice-Chairperson.

AYES: Boardmembers Edie, Parnell, Miles and Chairperson Keller.

NOES: None.

ABSTAIN: None.

ABSENT: Boardmember Farris.

Motion to postpone the election of a Vice-Chairperson carried with a 4-0 vote.

OLD BUSINESS
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KELLER: And then the next item on the agenda is old business, and I don't think we have any old business to discuss tonight.

HORNICKEL: That's correct.

PUBLIC HEARING
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#### 5. Request For Administrative Review of Section 405.030 C Pertaining to Non-Conforming Uses of Structures and Land at 614 W. College Street, Branson, Missouri.

Project No. 11-18.1 (11-01800001)

Applicant: City of Branson

KELLER: And then tonight's public hearing is a request for administrative review of section 405.30 C pertaining to non-conforming uses of structures and land at 614 West College Street in Branson, and that is our project number 11-18.1. And Joel, would you like to bring us up to speed on what we have here tonight?

HORNICKEL: Absolutely. I'll go through a brief presentation for you. As you mentioned, it's an administrative review this evening in section 405.030 C. The address again, 614 West College. It's currently zoned R-2, two-family district, and what we're discussing tonight, it pertains to non-conforming uses of the structures and land. And you'll see from the pictures, this is the Church Army Thrift Store property, up the road here from city hall on College.

You'll-- what we're asking you to pay particular attention to is this accessory structure that's located in this picture here, as well as you can see there's some sofas and things out front as well in the picture below. Next slide is a vicinity map, aerial, showing again the location along College Street to the north of it. Vicinity map on the next slide showing the zoning. It is R-2 zoned adjacent to multi-family zoning, as well as single family to the south. A little bit of background on section 405-030 C states that:

- *Non-conforming uses of structures land in combination.* If lawful use of structure and land in combination exists at the effective date of adoption or amendment of this title, that would not be allowed in the district under the terms of this title, the lawful use may be continued so long as it remains otherwise lawful, subject to the following:
  - 1) That no existing structure devoted to a use not permitted by this title in the district in which it is located shall be enlarged, extended, constructed, reconstructed, moved, or structurally altered except in changing the use of the structure to a use permitted in the district in which it is located, and;
  - 2) That any legal non-conforming use may be extended throughout any parts of the building which were manifestly arranged or designed for such use at the time of adoption or amendment of this title, but no such use shall be extended to occupy any land outside such a building.

The applicant is requesting to be allowed to continue to use the accessory structure – that you can once again see in the picture on this slide – that was constructed on the property last November in 2011. Staff's interpretive issue with the applicant's request to keep the accessory structure is that it is a new structure that has been constructed without changing the use of the property, which is non-conforming – it's commercial today, being that it's a thrift store – to a permitted use, R-2 two-family dwelling, in the district which it is located, as you saw from the earlier vicinity map. And then the second point, that the non-conforming use has been extended to occupy the land outside of the existing building, as you can see again from the picture. So the administrative review, as we're calling it this evening, in section 425.040: Powers and duties, state that:

- *Administrative Review.* To hear and decide appeals where it is alleged there is an error in any order, requirement, decision, interpretation, or determination made by the director of planning and development in the enforcement of this title.

So that's the presentation for this evening.

LAWSON: Mr. Chairman, if I can add to this. The way the ordinance is written that Joel just read, it normally deals with a building that is-- it's already built and a lot of times it's a building that's outside the corporate limits and then is annexed, and then it becomes a non-conforming use. And so normally the way we deal with these is you cannot add on to the building. You can't either go up or out or something like that, and then you can't add on-- you can't add to the

use. So if he has-- if it's a used car lot and he only has just one small area he's used for display of cars then he wants to expand that into his entire property, he really can't do that. This is somewhat unusual – and that's why we brought it to you – was whether or not a storage building-- the addition of a storage building really is an expansion of the non-conforming use. It's not an expansion of the building where they have the furniture and stuff that people come into; it's more of a storage unit. At the time Church Army was looking at building this, they asked the staff about, well, do you need a permit for something that's less than two hundred square feet to build, and the answer is no, you don't. And then when they started building it was when I got involved in it and said, wait a minute, this could be an expansion of a non-conforming use. I did allow them to complete the building because it was about half up, but so that's where we are now. This-- if you recall, this was a floral shop for many years and I think – I mean, you all might know more about this than I do, but – I think at that point, everything was kind of inside that fenced area and those kind of things, so. This is an interpretative issue as whether or not to build them a storage building is the expansion of a non-conforming use.

KELLER: Thank you.

LAWSON: Thank you.

KELLER: Will the applicant please step to the podium and write your name on the list there then also state your name and?

HUNT: Yes. My name is Kevin Hunt and I'm-- guess I'm here to represent Church Army tonight. I really-- when we started this, like you said, the guy that was building it come down and asked about permits, so we didn't-- you know, it was totally by accident that, you know-- and the fence that he was talking about that goes around there, we built the fence to cover up-- I mean, we've done our best to make that corner look better than it did whenever we took the store over. We've painted the building; we've roofed it. I mean, we've done our best to make it more-- less of an eyesore than what it was. And it was-- we have couches that sit out on the other side of the curb there, where you see in the picture, and that's what we built that for is because we didn't-- room in the store. We could put the couches in the shed and that's-- and we-- it was totally by accident, and we didn't mean to offend anybody. We wasn't trying to break the law or nothing. We just-- and so I guess that's-- now we've got to build, you know, we asked about the permits. Now it's-- we spent three thousand dollars (\$3,000) building the building and now we're here, and I just-- I mean, I really don't have a case to stand on because it's non-conforming. We went through this with one of our houses and I understand the fact they're not adding on. I just didn't understand where that was zoned at, you know, and how it was zoned there. So I understand what they're saying, but also understand what we're saying, too, and I'm not-- you know, it's I guess it's up to you all what we want to do with it. We'll know--

LAWSON: And you may have said this and I missed it, but that particular building, is it going to be used for storage of stuff that you already have?

HUNT: Yes.

LAWSON: Okay.

HUNT: I mean, that's the stuff-- it's-- nobody goes-- I mean, we pull furniture out of there, but that's all it is. I mean, we put stuff in there and we pull it out of there. And it's just to keep the clutter down in the store when it's raining. Like especially this winter with all the snow, we could keep the stuff in there without-- and people still get into the store and shop, you know. And it's-- I mean, if--

LAWSON: What is your long-term plan for the building? When it was built – that's one reason I let you complete it – when it was built, you built it kind of on a sled, that's my term, but you built it where it could be moved, so are you thinking that this is a short-term use or--?

HUNT: Well, I mean, we put it on a sled just in case we ever-- because we leased the building--

LAWSON: Okay.

HUNT: --and so we put it on there. We built it if we-- that way if we do get out of that lease and decide to move somewhere else, we could take the shed with us. I mean, that's the only reason it's on sleds.

KELLER: So it could be relocated, in the event it had to be?

HUNT: I could say yes, but I really mean no.

LAWSON: Yeah.

HUNT: I'm just kidding. I mean, it's--

LAWSON: We had looked-- also, we had looked at if there was a way to push the shed inside of the fenced area, but because of the way that was used as a floral place, there's still a bunch of concrete slabs and stuff that's in there, so it's not particularly flat in there.

MILES: That's the old greenhouse, isn't it?

LAWSON: Is that what it was? the greenhouse?

(Boardmembers indicated to the affirmative.)

LAWSON: And so there again, I'm actually the applicant because this is an interpretative matter, but--

EDIE: Mr. Chairman?

KELLER: Yes?

EDIE: I have a question. What's the size of that building? Is it two hundred or is it less?

HUNT: It's less than two hundred. It's-- how big did we build it? You got me. I didn't realize there was going to be a hearing tonight. I thought-- I was used to coming to the board of aldermen's meetings where they hear something then it goes on, so. But it's-- I think it's--

LAWSON: It's less than two hundred square feet.

EDIE: Is it under? Okay.

LAWSON: Yeah. I just don't recall the exact measurement.

MILES: Seems like it's about ten by twelve. I drove by and counted the plywood on the side.

EDIE: A hundred twenty square feet. I have another question, but I forgot what it was. Oh, has anybody in the neighborhood objected to that building?

HORNICKEL: We have not received any--

LAWSON: No.

HORNICKEL: --anything written or oral from any of the neighbors.

EDIE: Thank you, thank you a lot.

PARNELL: Mr. Chairman, may I ask a question?

KELLER: Yes, please.

PARNELL: Do you have any idea how long you anticipate-- when is your lease come--

HUNT: It's a month-to-month lease.

PARNELL: Oh, it is; okay.

HUNT: Yeah, and it's—

PARNELL: And to the best of your knowledge, looking at your long-range plans, how long would you estimate that you plan on using this particular property for this purpose?

HUNT: It'll be a while. I mean, we have a lot of furniture that's been donated to the store from the resorts in the area and stuff. And we have-- I mean, we have a warehouse in Christian county that's full and I have storage units out by the dam that are full of furniture also, so. I mean, unless we find a different building or move to a different location, I mean, that's where we'll be. I mean, I--

PARNELL: And this is serving your needs right now pretty well?

HUNT: Yes. It's-- I mean, it's wonderful. It-- I mean, it helps out the ministry. A lot of the funds go to the single mothers program which that helps out single mothers. And I mean, it really bring-- it really generates the revenue to help the ministry, so we can continue to help people.

KELLER: Any other questions? comments?

EDIE: Mr. Chairman?

KELLER: Okay.

EDIE: If you did decide to move, you could take this with you, could you not?

HUNT: Yes, sir.

EDIE: Thank you.

PARNELL: Mr. Chairman?

KELLER: Yes?

PARNELL: One more question.

KELLER: Yes.

PARNELL: Can you elaborate a little bit on the contact that was made. Who contacted the city with the question about structures under two hundred feet?

HUNT: Matt Mylenbusch, who has Recovery Roofing.

PARNELL: Okay.

HUNT: He-- we'd asked him to build the shed for us and like stop down at the city and make sure if we needed the permits or whatever when-- and so he come down and he talked to Tara, I believe, and asked if he needed any permits. Well, now you see the miscommunication, you

know, where he asked for permits to build it. Well, we didn't need a permit to build it, but we needed to go through another order to-- for the zoning part of it and that's-- but, you know, he come down and he asked and everything was okay, so we ordered the lumber and got it started, and then that's when Jim drove by and-- I mean, I totally understand their stance. I have no-- I mean, just-- I'm just here hoping we don't have to move it, so we can continue to use it for storage.

KELLER: Thank you.

MILES: Mr. Chairman,--

KELLER: Yes, please.

MILES: --may I ask a question? Kevin, do you store anything behind the fence? any merchandise?

HUNT: No merchandise because of the rain and stuff, but--

MILES: Uh-huh.

HUNT: --what we usually have behind the fence is like, if we get some old couches that are-- I mean, and some of our couched aren't, but if we don't have room to store them, we'll put it behind the fence and then I'll-- like once a month I take a load to the dump and stuff, and that's the only thing we really keep behind the fence. And on the other side of the building, there's another fence and we have a box truck that sits behind it and our dumpster sits behind that fence.

KELLER: Any other questions? comments?

LAWSON: If I may say one more time – and I'm reading the letter from them, the Church Army – and this is one of the-- this is why we're here, because of this interpretative issue. And in one of the sentences in his letter is 'a sole purpose of this shed and it's less than two hundred square feet there will be no structural alterations to the existing buildings.' And that's why we're here because I really didn't feel comfortable ruling, even though I did-- I did rule that it was the expansion of a non-conforming use, but it is certainly not clear in the code. And so that's because it's normally-- you're expanding the building that's already there. In this case, this was not there.

KELLER: Is this considered a temporary shelter, or?

LAWSON: This-- we would consider this storage, temporary storage. And because-- you know, if it were a building that he sold stuff out of and-- that would be even clearer that it was an expansion of a use, but in this case it is storage for the things that are already there. But I

didn't-- you know, like I say, I'm not real comfortable with the interpretation without you all looking at it because we have never had anything like this before. Dub, did you want to add anything?

PARNELL: Mr. Chairman, could I ask a question of staff?

KELLER: Yes, please.

PARNELL: I can't tell from-- I recognize where on the lot it sits, but in your opinion, does this structure provide any danger with regard to viewing-- obstructing vision--

LAWSON: Site distance? No.

PARNELL: --at the intersection?

LAWSON: No.

HORNICKEL: No.

LAWSON: No. It's far enough away that it doesn't.

PARNELL: Okay.

LAWSON: And if it were a commercially zoned lot, then it wouldn't be-- it wouldn't have any problem in terms of setbacks, but it's still zoned R-2--

PARNELL: Yes.

LAWSON: --so, that's an issue.

PARNELL: Right.

KELLER: So it is meeting the setbacks and everything else for the city requirements?

PARNELL: If it were commercial.

KELLER: So it's not.

LAWSON: Yeah, it's residential, even though I guess it hasn't been used as residential. I don't know whether it ever has been used for residential.

KELLER: How did they have the flower shop in there and not be zoned commercial?

PARNELL: May I add?

LAWSON: Yeah, please.

PARNELL: It used to belong to a gentleman named Theodore Hirsch. I bet you maybe remember Theodore and he did live there, and that was a-- I think he had a flower--

LAWSON: Oh, really.

PARNELL: --for years and years, he lived there, so it was a residence. And I don't know how he got permission to make it a business, but--

LAWSON: Yeah.

PARNELL: --who knows.

EDIE: Well, perhaps the zoning--

PARNELL: It started as a residence.

EDIE: The zoning was a little more lax when that happened.

LAWSON: It could've been.

PARNELL: Do you remember Theodore?

EDIE: Yeah, oh, yeah. I remember passing out candy.

KELLER: Any other questions or comments? Then I guess at this point we'll make-- oh, please come up Dub.

DUSTON: For the purpose of the record, let's-- I want to be clear on how we're voting, what we're voting on. The application's been filed by the planning and zoning department, but the decision that was made was that this is a non-conforming use, correct?

LAWSON: Yes. The decision was made that this was an expansion-- my interpretation, it was an expansion of a non-conforming building or use, use is the best way, I guess.

DUSTON: When you filed the application, it was a request by the Church Army to--

LAWSON: Yes.

DUSTON: --review your decision that this was a non-allowed expansion?

LAWSON: Right. And if we had-- if this was an issue we've dealt with-- the board of adjustment and others have dealt with then we would not even be here.

DUSTON: And so to the review of your decision, it would take a four-vote-- four votes of this board affirmatively to overturn your decision to allow the structure to stay?

LAWSON: That is correct.

DUSTON: Thanks.

KELLER: So what you're saying is four yes votes overturns this, right? That's what I--

DUSTON: Based on your motion to.

KELLER: Thank you. Any other questions, comments? Then at this time, Jim, we'd like to make a motion to approve the file here as such noted and call for a vote on it.

LAWSON: Okay, let's-- wait. Hold on a second. Since I'm the-- this is really kind of awkward. The city is the--

DUSTON: Normally the motion would be to approve the--

LAWSON: Right.

DUSTON: --determination made by the planning and zoning director.

LAWSON: Okay.

DUSTON: Yeah to approve your decision or nay to overturn the decision.

LAWSON: Okay. And so if you want to support the Church Army keeping that building, it'd be a no vote. If you want to eliminate the building, it'd be a yes vote.

DUSTON: A motion would need to be made to affirm the decision of the planning and zoning director.

LAWSON: Okay; thanks.

EDIE: A no vote is in Church Army's favor?

PARNELL: Right.

HORNICKEL: That's right.

PARNELL: Correct.

DUSTON: If the motion is made to affirm the decision of the planning and zoning director, to vote no would be to overturn the decision-- the determination of the planning and zoning director.

EDIE: Thank you very much.

KELLER: Okay, thank you.

PARNELL: Mr. Chairman, I would move that we bring to the table a motion to affirm the planning director's decision.

KELLER: And a second?

EDIE: I'll second it.

PADEN: Boardmember Edie?

EDIE: No.

PADEN: Boardmember Parnell?

PARNELL: No.

PADEN: Boardmember Miles?

MILES: No.

PADEN: Chairperson Keller?

KELLER: No.

PADEN: Motion is denied with a four-zero vote.

The motion to affirm the determination of the Director of Planning and Development for Project No. 11-18.1 was denied with a 4-0 vote.

<b>OTHER BUSINESS</b>
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KELLER: At this time, we don't have any other business or an executive session.

EXECUTIVE SESSION

None.

ADJOURNMENT

KELLER: So we'd have a motion to adjourn.

EDIE: So moved.

MILES: I'll second that.

PADEN: Boardmember Edie?

EDIE: Yes.

PADEN: Boardmember Parnell?

PARNELL: Yes.

PADEN: Boardmember Miles?

MILES: Yes.

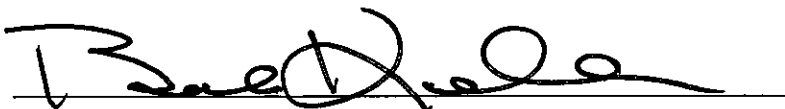
PADEN: Chairperson Keller?

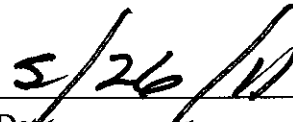
KELLER: Yes.

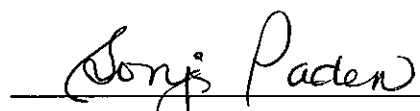
PADEN: Motion to adjourn passes with a four-zero vote.

MOTION:

Motion by Boardmember Edie and seconded by Boardmember Miles to adjourn the meeting at 7:27 p.m.

  
Bob Keller, Chairperson

  
Date

  
Sonja Paden, Office Assistant II

5.26.11  
Date